

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 20, 2003 at 7 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 529, 2/7/2003; HB 658, 2/7/2003;
HB 693, 2/7/2003; HB 695, 2/7/2003;
HB 697, 2/7/2003

Executive Action: HB 540; HB 430; HB 615; HB 482; HB 571

EXECUTIVE ACTION ON HB 540

Motion: REP. FACEY moved that 540 DO PASS.

Motion: REP. FACEY moved that HB 540 BE AMENDED.

Discussion:

The Committee discussed HB 540 which would revise the laws relating to the selection of trial juries. Jurors would be selected from a combined list of qualified electors, licensed drivers, and holders of Montana identification cards. It would change the current law which states that jurors must be registered voters and it would expand the jury pool. **REP. RICE** commented that people who are not civic minded enough to register to vote should not be in jury pools.

Motion/Vote: REP. FACEY moved that HB 540 BE AMENDED. Motion carried 17-1 with REP. SALES voting no.

Motion/Vote: REP. FACEY moved that HB 540 DO PASS AS AMENDED. Motion carried 11-7, by roll call vote, with REPS. LASZLOFFY, SALES, LANGE, RICE, MALCOLM, STOKER, and EVERETT voting no.

EXECUTIVE ACTION ON HB 430

Motion/Vote: REP. HARRIS moved that HB 430 BE TABLED. Motion carried 17-1 with REP. NOENNIG voting no.

EXECUTIVE ACTION ON HB 615

Motion: REP. GALLUS moved that HB 615 DO PASS.

Discussion:

The Committee discussed this bill brought by REP. EVE FRANKLIN. **REP. FACEY** supported the bill. He became convinced of its necessity when a physician testified that if the protective bubble is moved back eight feet, the confrontations may become more violent and threatening. **REP. FACEY** stated the key word being "more." He felt that the physician essentially testified that the protests are presently violent and threatening.

REP. RICE stated this bill is starting down the slippery slope of special interests. She felt it would be nice to have a bubble

around herself to protect her from lobbyists. She emphasized that we have freedom of speech and the laws already exist to prosecute offenders under the intimidation and disturbing the peace statutes. **REP. SALES** opposed the bill for the same reasons given by **REP. RICE**. **REP. MALCOLM** opposed the bill as being too selective. **REP. LASZLOFFY** opposed the bill stating it is a free speech issue and people should be allowed to speak while on public property as long as they are not harming anyone.

REP. NEWMAN supported the bill stating that it does not infringe on free speech. He explained that it provides a small buffer to protect people from harm. He stated that the people who the bill intends to protect are seeking medical care. He stressed that, often times, people entering the clinics are not even going in for abortion issues yet they are subjected to threats and harassment. He explained that the Supreme Court has ruled numerous times that time, place, and manner restrictions are permissible as long as the content of the speech is not restricted.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 185}

REP. CLARK supported the bill. He felt it is not about free speech but rather about intimidating people so that they do not use the facility. He believed that the protesters' objectives are to close the facility down and in the process, they attack everyone who enters the facility.

REP. THOMAS asked whether they would build a fence to keep the eight foot mandate. He felt the practical solution would be for the clinics to provide a different door for people to use who want an abortion. **REP. FACEY** commented that he doesn't like tree sitters and if he had his druthers, he would cut the tree down with the guy in it. He felt that those tree sitters should be restricted by time, manner, and place as well. He stated that if the bill could be amended to allow loggers to make a living, he would support the bill.

{Tape: 1; Side: A; Approx. Time Counter: 186 - 239}

REP. EVERETT asked about ordinances which would keep people away from private property and whether picketers could make any physical contact under free speech. **REP. NEWMAN** responded that picketing is a lawful activity. As long as people are on the public sidewalk and not obstructing the door, they are protected. However, he stated that touching someone while picketing goes beyond free speech.

{Tape: 1; Side: A; Approx. Time Counter: 240 - 273}

REP. RASER commented that the bill provides that picketers must stay eight feet away from people entering the building and that the eight foot bubble would move with the person entering the clinic. In response to **REP. THOMAS'S** suggestion of a separate door, **REP. RASER** stressed, "you might as well put a big sign over the door stating, 'I'm here to have an . . . '"

REP. GALLUS supported the bill stating that this bill is not about abortion but about a person being free to walk into a clinic with dignity; without having to run through a gauntlet of intimidation. **REP. SALES** opposed the bill. He stated that if people want to protest at his church, bring them on; it is their First Amendment right of free speech.

REP. PARKER stated there is a pressing need for this bill. He stated a 14 year old girl who has been violently raped and who has to go and be tested for a venereal disease should not have to be harassed while going to a place she does not even want to go.

REP. LANGE emphasized that this bill is about abortion, a very selective issue.

{Tape: 1; Side: A; Approx. Time Counter: 274 - 309}

{Tape: 1; Side: B; Approx. Time Counter: 1 - 60}

Vote: Motion that HB 615 DO PASS carried 11-7, by roll call vote, with REPS. EVERETT, LANGE, LASZLOFFY, RICE, SALES, STOKER, and THOMAS voting no.

EXECUTIVE ACTION ON HB 482

Motion: **REP. NOENNIG** moved that HB 482 DO PASS.

Motion: **REP. NOENNIG** moved that HB 482 BE AMENDED.

Discussion:

The Committee discussed this bill brought by **REP. FORRESTER**. The bill would make unenforceable, any contract provision that requires one party to indemnify another party to the contract, or the other party's officers, employees, or agents, for liability, losses, damages, or costs. **REP. NOENNIG** stated the bill is to address a problem in construction contracts which makes the contractor responsible for the owner's negligence. He stated the purpose of this bill is to equalize bargaining positions. He stated that it would not allow a person to force another for their own negligence.

Motion/Vote: REP. NOENNIG moved that HB 482 BE AMENDED. Motion carried unanimously by voice vote.

Motion/Vote: REP. GALLUS moved that HB 482 DO PASS AS AMENDED. Motion carried 17-0, by voice vote. (REP. GUTSCHE stepped out.)

EXECUTIVE ACTION ON HB 571

Motion: REP. PARKER moved that HB 571 DO PASS.

Motion: REP. PARKER moved that HB 571 BE AMENDED.

Discussion:

REP. PARKER explained that this is a consumer protection bill.

Vote: Motion that HB 571 BE AMENDED carried 17-0, by voice vote.

Motion: REP. PARKER moved that HB 571 DO PASS AS AMENDED.

Discussion:

REP. NOENNIG commented that he was particularly concerned with Page 2, Lines 23-26, which attempts to incorporate the Federal Trade Commission Guidelines into statute. He stated that the problem is that these guidelines change from time to time and he is not comfortable with putting guidelines into a statute to try to determine what the language means. He felt these lines should be stricken. REP. PARKER stated he would go along with the suggested Noennig amendments. REP. HARRIS suggested postponing action on this bill until they have a chance to look at the proposed amendments for HB 127 as they are overlapping bills. REP. PARKER stated that rehousing the Consumer Protection Attorney is the main purpose of the bill but to wait and examine the bills side by side would not be a bad idea. REP. NOENNIG stated that HB 571 has been adequately addressed and with lack of time, perhaps it could either go forward or be tabled.

Motion/Vote: REP. NOENNIG moved that HB 571 BE FURTHER AMENDED. (Noennig Amendment.) Motion carried unanimously by voice vote.

Motion/Vote: REP. PARKER moved that HB 571 DO PASS AS AMENDED. Motion carried 16-1 with REP. SALES voting no, by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 61 - 378}

HEARING ON HB 529

Sponsors: REPS. CHRISTINE KAUFMAN, HD 53, Helena; JOEY JAYNE, HD 73, Arlee

Opening Statement by Sponsors:

REP. KAUFMAN opened on HB 529 stating that this bill would abolish the death penalty and replace it with a sentence of life without the possibility of parole. She posed whether it is the State's role to carry out revenge with tax dollars. She posed that State authorized killings are immoral making the State a murderer. She stated that the death penalty has been discarded in civilized countries and puts the United States into company with countries like Iraq and Iran; it compromises the United States role as a leader of human rights. Studies show that the death penalty has no deterrent effect. She stated that the death penalty costs much more to Montana taxpayers than a sentence of life without parole. She emphasized that innocent people have been wrongly executed and it will never be a fail-proof system. A study at Duke University revealed that it costs \$2.1 million more to execute a person than to sentence them to life without parole.

{Tape: 2; Side: A; Approx. Time Counter: 43 - 105}

REP. JAYNE opened on HB 529 stating that capitol punishment is administered unfairly and should be abolished. She stressed that the focus of our criminal institution should not be hatred and vengeance, but healing and reconciliation. She respects the furor and the sorrow of victims' families. She stated she is a Navajo woman and in her culture, life begins very early and it is preserved throughout a woman's life. She stated that 95 percent of her culture believes life should be preserved at all costs, even in the tragic case where a person deliberately takes another's life. She told of Thurgood Marshall who joined the United States Supreme Court in 1967. During the last 15 years of his career, he looked at how states administered the death penalty. He recorded how use of the death penalty is inevitably linked to race and class. She emphasized that there is no way to know how many innocent people have been executed, but she stressed we can be certain there were some.

{Tape: 2; Side: A; Approx. Time Counter: 95 - 202}

Proponents' Testimony:

REP. STEVE GALLUS, HD 35, Butte, supported HB 529. He stated there is too much room for irreversible error with the death penalty. There have been countless examples of death row inmates exonerated by scientific evidence. He stressed that rich people do not get the death penalty and rarely get convicted. He emphasized that minorities are more affected by the death penalty than are whites. It is cheaper to put someone in prison for life than to follow through with the death penalty. He stated that life means life; hard time at Montana State Prison where you stay until you die. He stated that approximately 75 percent of the people in his district support the death penalty which makes it very difficult for him to stand against what is popular. He stressed that sometimes the right thing isn't popular and sometimes the popular thing isn't right. He stated this bill is right and he urged a do pass.

{Tape: 2; Side: A; Approx. Time Counter: 203 - 254}

Alvin Bronstein, Founder and Director of ACLU Prison Project, Washington, DC, supported HB 529. He stated he has been a criminal justice expert involved with death penalty issues for the past 50 years. He stated that throughout the world, democratic nations are abolishing the death penalty. His father immigrated from the Ukraine to flee the brutality of the government in the 1930's. **Mr. Bronstein** was in the Ukraine five years ago when they abolished the death penalty. He stressed that in this hemisphere, the United States is the only country which has the death penalty with the exception of a few British common law countries. He stressed that all of South and Central America have abolished the death penalty. Mexico and Canada, in North America, have abolished it. Canada, our closes neighbor, abolished the death penalty in 1974 and the homicide rate has decreased every year since the abolition. He urged the Committee to abolish the death penalty.

EXHIBIT(juh38a01)

{Tape: 2; Side: A; Approx. Time Counter: 255 - 316}

John Sheehy, Retired Montana Supreme Court Judge, Helena, supported HB 529. He stated that the death penalty is cruel and unusual punishment. He stated there have been instances in Montana where the prosecution withheld evidence which could exonerate a defendant. He emphasized that if just one person is wrongfully executed, it is intolerable for a civilized society.

{Tape: 2; Side: A; Approx. Time Counter: 317- 363}

Michael Donahoe, Attorney, Helena, supported HB 529. He stated he is a federal public defender. He explained that many people involved with a capital case are morally opposed the death penalty but that they must engage it due to a sense of duty, perhaps an oath was taken. He submitted as a lawyer, personally involved in capital litigation since 1985, it exacts a toll that is sometimes indescribable. He stated that Monday, February 24, 2003, marks the 5th anniversary of Terry Langford's execution which he attended at Mr. Donahoe's request. He explained that he got to know Mr. Langford well, as a human being. He stated that what causes him great pain, is that Mr. Langford was accepting responsibility, up to a point, but that it receded the closer he got to execution.

Mr. Donahoe stated that the death penalty forces many people, judges, prosecutors, jailers, jurors, to set aside their religious and moral principles. He felt it is unfair to force the good people of Montana to engage in the process of executing people. His daughter asked him what he was going to tell the Committee and he responded, "I don't know." She replied, "You should just go and tell them that it is wrong!" "And it is."

{Tape: 2; Side: A; Approx. Time Counter: 364 - 430}

Marietta Lane, Three Forks, supported HB 529. She stated 30 years ago, she was camping at the Missouri River Headwaters Campground when her seven-year-old daughter, Susie, was kidnapped and murdered. Although the death penalty was applicable, at Ms. Lane's request, the county attorney offered mandatory life imprisonment without parole. Only then was the young man willing to admit to the rape, strangulation, death, and dismemberment of her daughter as well as to the death of a young woman and two young boys in the same area.

{Tape: 2; Side: A; Approx. Time Counter: 431 - 512}

She stressed that Montana's death penalty had no deterrent effect in these cases. She described the rage she went through and her desire to kill the kidnapper with her bare hands. Although she struggled with rage and revenge, she became committed to forgiveness. She felt strongly that a mandatory life sentence in prison, without the chance of parole, is the best solution; a full life sentence which offers the possibility of repentance, reflection, rehabilitation, and restitution. She urged the Committee to refuse and refute the government's policy of death for the health of victims' families and for this State. She shared that when her daughter was kidnapped, the wonderful people of Montana went to the campground and cared for the Lanes in a myriad of ways. She passionately asked the Committee, "Do not

kill in our names with our tax dollars. Let's lead the way to less violence."

EXHIBIT (juh38a02)

{Tape: 2; Side: B; Approx. Time Counter: 1 - 22}

Father Jerry Lowney, Professor at Carroll College, Helena, supported HB 529. He teaches a class in criminology at Carroll. He has preached against the death penalty and received death threats because of it. He teaches that the death penalty has no deterrent effect. He felt that the death penalty is a counter deterrent for a couple of reasons:

- 1) The value for human life is belittled.
- 2) Sociopaths want to be punished.

He explained that when a sociopath sees the State execute someone, they will do whatever the offender did, or something similar, so that the same punishment would be inflicted upon them.

Father Lowney told the Committee about his experience with counseling David Keith who wanted to be executed. He explained to Mr. Keith that many other people would die if he was executed. Mr. Keith stated he understood and it was only after that discussion, that Mr. Keith was willing to sign a petition for clemency. **Father Lowney** explained another situation with Duncan McKenzie. He stated he could not share much about what was said the night before Mr. McKenzie's execution due to the penitent relationship. Duncan McKenzie raped and murdered a young woman in his pick up truck. A month after Mr. McKenzie was executed, a person went out West of Helena, Montana, picked up a young woman, in a pick up truck, and raped and murdered her. **Father Lowney** stated that he is convinced that the offender had a sociopathic mind and imitated what he saw the State of Montana do to Duncan McKenzie.

{Tape: 2; Side: B; Approx. Time Counter: 23 - 67}

Father Lowney stated that the minute the prosecution decides to try a case as a capitol offense, the costs increase exponentially. He stated that Deuteronomy does state, "an eye for an eye" but that is the Old Testament. He explained that Jesus Christ, in the New Testament, is quoted in Matthew 5, as stating, "This was the old law. I give you a new law. Do good for your enemies. Turn to the other cheek. Pray for your persecutors."

He urged the Committee to make Montana one of the leaders in intelligence and guts; make Montana a good example to other people.

{Tape: 2; Side: B; Approx. Time Counter: 68 - 84}

Doctor Eve Malo, Professor at Western University, supported HB 529. Her uncle killed her grandmother. Her family experienced that situation from the perspectives of the victim and the killer. She felt fortunate to have a great aunt who was a very righteous woman who helped her family forgive and heal.

Two years ago, she and Clark Sinclair, traveled around Montana visiting 41 communities to talk about the death penalty. He went in a sheep wagon. She stated many people showed up at their meetings with interesting dialogue on three main points: the death penalty is not a deterrent, it is not cost effective, and it does not promote healing. She was appalled that four young people she met with had relatives on death row in other states and wanted them executed. On the other side, she stated there was much discussion on the importance of healing. She had originally scheduled 42 towns but one town would not accept them because that town had not healed. She stressed that town is still so angry even though the person has been executed.

She felt that healing is such a vital part for the families of victims yet there is so much societal support to continue the rage. She close stating, "The death penalty does not heal."

{Tape: 2; Side: B; Approx. Time Counter: 85 - 123}

Cathy Dionus, supported HB 529.

EXHIBIT(juh38a03)

Betty Whiting, Montana Association of Churches, Helena, supported HB 529.

EXHIBIT(juh38a04)

Laney Candelora, Catholic Conference, supported HB 529.

EXHIBIT(juh38a05)

EXHIBIT(juh38a06)

Sharon Haufbroadway, Montana Abolition Coalition, supported HB 529.

Gene Fenderson, supported HB 529. He stated that he has spent his career fighting for economic justice. He stands strongly for choice and strongly against the death penalty. He felt his views are grounded in an economic base. He stated that in regards to choice, if it is outlawed, only the rich will have it because they will fly to Denmark, and Sweden; Regarding the death penalty, only the poor will die because the rich never do. He urged the Committee to support this bill.

{Tape: 2; Side: B; Approx. Time Counter: 124 - 174}

Cris Chichton, ACLU, supported HB 529.

Mike Barrett, Poet, Letter Writer, Former Town Councilman, Helena, supported HB 529.

Opponents' Testimony: None

Informational Testimony:

John Connor, Department of Justice, Helena, stated that he is available for questions.

Questions from Committee Members and Responses:

REP. RICE stated that she is in an awkward position because while Ms. Lane's situation occurred in Three Forks, she has friends in Harrison who had the same tragedy occur to their daughter and they support the death penalty. **REP. RICE** asked Ms. Lane to comment on that dilemma. **Ms. Lane** responded she is on the side of life giving. She stated she has worked with the families of murder victims for 25 years. She stated it has been 30 years since the family in Harrison lost their daughter and they still have not dealt with it; they are holding onto negative feelings; they are still stuck back there and it is a waste of their good lives. She added that **REP. RICE** could help them a lot, and countless others, if she would vote to abolish the death penalty.

{Tape: 2; Side: B; Approx. Time Counter: 175 - 263}

REP. RICE asked Mr. Connor to describe the six people on death row along with their crimes. **Mr. Connor** responded that the person on death row at Montana State Prison (MSP) the longest is Ronald Smith. He murdered two Native American men in 1982. David Dawson murdered three family members. Mr. Gollehon and Mr. Turner killed Daryl Pilleggi in Prison during a baseball game in 1992. Mr. Sattler killed a woman in Thompson Falls and was in boot camp when he almost killed Donna Weeks. Mr. Sattler was

placed in the Lake County jail where he beat an inmate to death with a bicycle seat. Mr. Dan Johnson committed a homicide in Havre and was in Deer Lodge when he killed an inmate in the high side bathroom with a horse shoe.

{Tape: 2; Side: B; Approx. Time Counter: 264 - 298}

REP. HARRIS asked Mr. Bronstein which countries have the death penalty. **Mr. Bronstein** responded that only the United States, Iraq, the Congo, and Sudan impose the death penalty on children under 18. He stated that the following countries, besides the United States, impose the death penalty on people 18 and older: 30 countries in Southeast Asia, two in Africa, one in the Soviet Union, and the Caribbean Commonwealth countries (Trinidad, Tobago, Jamaica, and the Bahamas.)

{Tape: 2; Side: B; Approx. Time Counter: 299 - 386}

REP. FACEY asked who paid the defense costs of inmates on death row who killed while in prison. **Mr. Connor** stated Mr. Sattler and Mr. Johnson received court-appointed attorneys hence the Montana taxpayers paid for their defense. He stated the county picked up the additional expense and then sought reimbursement from the State. **REP. FACEY** asked whether the Bar Jonah case was the only case, in the last five years, that faced the death penalty. Mr. Connor responded that there are other cases in which the death penalty was possible because there were one or more aggravating circumstances involved in the commission of the offense.

{Tape: 2; Side: B; Approx. Time Counter: 387 - 472}

REP. FACEY believed there was a moratorium on the death penalty because Montana could not afford the expenses. **Mr. Connor** responded that there is, in effect, a moratorium because either through agreement of counsel, or because of court decisions, all the death penalty cases, except for the Turner case, are on hold pending a decision of Ring v. Arizona. He explained that Ring is the U.S. Supreme Court case which stated that Apprendi-related criteria for imposing sentencing enhancements applied to the aggravating circumstances in a death case. **REP. FACEY** believed Montana cannot afford death penalty cases. **Mr. Connor** agreed that Montana cannot afford the death penalty but that he has never been involved in a case where it was not pursued for purely financial reasons. He recalled one case in which an individual killed two members of a family and seriously injured the other two. He stated that the prosecution backed away from the death penalty because the victim's family did not care whether the

defendant received the death penalty or not. That defendant received three consecutive life sentences.

Mr. Connor explained that many factors come into play on whether the prosecution will seek the death penalty. He stated that the wishes of the victim's family are a very important consideration in whether the death penalty will be sought. He explained that the death penalty is not sought for revenge but as an option put forth by the Legislature.

{Tape: 2; Side: B; Approx. Time Counter: 473 - 511}

{Tape: 3; Side: A; Approx. Time Counter: 1 - 28}

REP. GUTSCHE asked Mr. Bronstein to comment about the decline in the number of people who support the death penalty. **Mr. Bronstein** responded that public opinion is like a pendulum which moves according to what is going on in the world. He stated he is not a social scientist but that a lot of it has to do with the state of the economy and national issues. He summarized stating that, generally, there is a less punitive feeling in the country.

REP. GALLUS asked Father Lowning to explain his relationship with Ireland, their perception of our system, and if our system has any obstacles. **Father Lowning** responded that he teaches a course every other summer in Ireland and he has become familiar with criminologists there. He emphasized that Ireland really admires the United States but that they are abhorred by the violence in America. He stated that Ireland abolished the death penalty over 60 years ago as did most of Western Europe during the same period of time. He stated that on the night Timothy McVeigh was executed, he was a guest on a national radio talk show. He received many calls from people asking why the United States, whom they admire, is such a violent place.

{Tape: 3; Side: A; Approx. Time Counter: 29 - 117}

REP. STOKER asked whether Mr. Connor could do the same type of litany on people who have received life without parole. **Mr. Connor** responded he could not at that time but could get the information.

REP. RASER asked whether a person who received a sentence of life without parole could be changed to where they could be paroled. **Mr. Connor** stated there may be a situation involving a medical parole which could override a life without parole. **REP. RASER** asked how many times a victim's family may have to revisit the case before the death penalty is imposed. Mr. Connor responded that it can be countless. He remembered a case involving a

defendant, Bernard Fitzpatrick. The Ninth Circuit Court of Appeals overturned his conviction and ordered the State to retry him or to let him go. Mr. Fitzpatrick murdered a fellow from Hardin and the victim's family was appalled that they had to go through the process 15 years after the murder took place. He emphasized that a victim's family is told up front that if they go for the death penalty, it may go on for years.

CHAIRMAN SHOCKLEY asked Father Lowning whether his statement that "a sociopath wants to be punished" is in the DSM IV Manual.

Father Lowning stated he was talking about sociology and not psychology and that they have different definitions.

CHAIRMAN SHOCKLEY asked Mr. Connor whether he looked at the fiscal note and whether it reflects the costs of an appeal. **Mr. Connor** stated it does not. **CHAIRMAN SHOCKLEY** mentioned that there is always an automatic right to an appeal after conviction in a death penalty case. He asked Mr. Connor to explain what happens next. **Mr. Connor** responded that following an appeal to the Montana Supreme Court, there is a Writ of Certiorari to the U.S. Supreme Court asking for a review of what the Montana Supreme Court did. If that is unsuccessful, the defendant may petition for Post Conviction Relief at the District Court level and if unsuccessful, may appeal that to the Montana Supreme Court and back to the U.S. Supreme Court. Then they can petition for a Writ of Habeas Corpus in federal court and then appeal the various aspects of that. **CHAIRMAN SHOCKLEY** asked whether that costs money. **Mr. Connor** responded it does.

{Tape: 3; Side: A; Approx. Time Counter: 121 - 210}

REP. CLARK asked about discrimination and mistaken convictions. **Mr. Bronstein** stated in the last ten years, 13 people on death row in Illinois have been released and exonerated by DNA. He explained that this was due to a project conducted by the Northwestern School of Journalism which precipitated Governor Ryan's moratorium of all 163 people left on death row. A review was conducted of all death row inmates' sentences. Governor Ryan then pardoned four people and changed the other sentences to life without parole. **Mr. Bronstein** explained that Governor Ryan was greatly motivated by honest religious feelings. He stated that the governor of Maryland, inspired by what occurred in Illinois, followed Governor Ryan's moratorium on Maryland's death row inmates. **Mr. Bronstein** informed the Committee that the new Maryland Governor has since lifted the moratorium on the death penalty. **Mr. Bronstein** explained that all the studies he has seen confirm that race is a definite factor in whether to impose the death penalty.

{Tape: 3; Side: A; Approx. Time Counter: 211 - 251}

REP. CLARK asked whether September 11 affected public opinion regarding the death penalty. **Mr. Bronstein** stated it has; that harsher attitudes existed shortly after the tragedy due to public outrage. He added that public opinion has more recently subsided somewhat.

REP. NEWMAN asked Mr. Bronstein whether it is logical for a country or a state that condemns the intentional taking of a human life, to punish that conduct with death. **Mr. Bronstein** responded that it is wrong for individuals to kill people, and doubly wrong for the state to kill people.

REP. HARRIS asked Mr. Connor whether he believed the death penalty was a deterrent. **Mr. Connor** responded that he does not believe it is a deterrent at all.

{Tape: 3; Side: A; Approx. Time Counter: 252 - 400}

Closing by Sponsor:

REP. KAUFMAN closed on HB 529.

HEARING ON HB 697

Sponsor: **REP. SCOTT SALES, HD 27, N.E. Gallatin County**

Opening Statement by Sponsor:

REP. SALES opened on HB 697, stating that this bill would take designations relating to race, creed, color, and national origin out of the Malicious Intimidation Statute. He explained that this bill would treat all Montana citizens the same regardless of their sexual orientation, faith or stature. He felt this bill would be a commonsense approach to treat people equally.

Proponents' Testimony: None

Opponents' Testimony:

Lynda Gryczan, Helena, opposed HB 697. She stated it would make every crime a hate crime and make the current law meaningless. She stated that the law recognizes a swastika on a synagogue as far more than mere vandalism. She urged the Committee to table this bill.

Travis McAdam, Montana Human Rights Network, opposed HB 697. He stated that by striking the list, you destroy Montana's hate

crimes statute. He emphasized that hate crimes are different and not all crimes are hate crimes. He stated that hate crimes affect more than the victim involved; they are a message to a section of the community. He stressed that passage of this bill would threaten the democratic process because fear, intimidation, and violence are used as a political tool to isolate people from public debate. He explained that the bill's intent, of eliminating the categories to make the law more inclusive, has been tried in other areas of the United States.

He stated that in 1993, the Texas Legislature passed a hate crimes law. The only guideline in the Texas law to discern if it was a hate crime was language about whether the motive was prejudice or bias. He told the Committee about a tragic hate crime incident. In 1998, three white supremacists chained a young man, James Bird, to their truck and dragged him to death because he was black. He explained how this incident changed the Texas hate crimes law. He stated it now includes crimes motivated against a person because of their race, color, disability, religion, national origin or ancestry, age, gender, and sexual preference. He closed emphasizing that if HB 697 passed, it would send a message that Montana condones hate crimes.

{Tape: 3; Side: A; Approx. Time Counter: 401 - 509}

{Tape: 3; Side: B; Approx. Time Counter: 1 - 66}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS commented on the great number of hate crimes committed at the turn of the century involving fights between labor and management. He asked whether by listing the categories, you risk leaving a category out. **Mr. McAdams** agreed with REP. HARRIS that at the turn of the 20th century, there were a lot of hate crimes around the unions. Regarding the categories, he responded that listed categories of Montana's current law were derived from the federal hate crimes statute. He encouraged anyone who believes hate crimes do not exist to check out the FBI website's hate crimes report. He emphasized that you don't get rid of hate crimes by getting rid of a list.

{Tape: 3; Side: B; Approx. Time Counter: 67 -95}

Closing by Sponsor:

REP. SALES closed on HB 697, stating that the opponents made his case. He felt that all crimes are hate crimes; that the bill's intent of eliminating special categories would result in the inclusion and protection of all Montanans.

{Tape: 3; Side: B; Approx. Time Counter: 99 - 109}

HEARING ON HB 658

Sponsor: **REP. TIM DOWELL, HD 78, Kalispell**

Opening Statement by Sponsor:

REP. DOWELL opened on HB 658. He stated this bill was conceived last December after a trip to Columbia Falls with Dale McGarvey. He stated this is a classic case of David against Goliath and that proponent Dale McGarvey will describe the details.

Proponents' Testimony:

Dale McGarvey supported HB 658. He stated that the Montana Highway Commission is not always right. He stated you have a problem when the highway commission does not listen to the neighbors along the right of way. He explained that he has been instrumental in getting the Highway Department (Department) to remove raised concrete dividers which have caused carnage along the highway.

He gave some examples of the carnage due to the Department's refusal to listen. One incident occurred at Highway 2 and LaSalle Road. The Department had put in raised cement dividers along the side of the highway which were too narrow and resulted in traffic being unable to move oneway or the other. He stated that a young woman, crossing the road, was hit and killed by a highway patrol officer going at a high rate of speed. The officer could not avoid hitting her due to the raised concrete dividers.

He gave another example in which the Department didn't listen to the neighbors along the right-of-way when it developed LaSalle Road. He explained the Department basically made LaSalle Road a high speed highway where people drive 55-70 mph. Costco offered to put in and pay for a stop light. The Highway Commission stated, "No." **Mr. McGarvey** represents John Johnson whose wife and daughter were killed at the intersection of LaSalle and Birch Grove Road. He stated that had their been a light there, these people would not have died. After their deaths, the Department decided it would be a good place for a light.

EXHIBIT(juh38a07)**Opponents' Testimony:****Tim Reardon, Chief Counsel, Department of Transportation**

(Department), opposed HB 658. He conceded that the Department is not always right in every design, but in the last 20 years, it has designed over 2500 projects in Montana. He stressed that the vast majority of those designs are safe, appropriate, and meet all the professional engineering standards. He stated the bill has many problems but the most damaging is it would effectively stop construction on many Montana highway projects. He stated in major highway construction projects, an environmental impact statement is conducted, public comments are received and this involves years. He explained that the Legislature declared in 60-1-102, that the goal is to place a high degree of trust in the hands of the officials whose duty it is, within the limits of funds, to plan, develop, operate, maintain, and protect the highway facilities of this State for present and future use. He emphasized that the Department strives to meet this legislative goal.

{Tape: 3; Side: B; Approx. Time Counter: 198 - 274}

Carrie Hegreberg, Executive Director, Montana Contractor's

Association (Association), opposed HB 658, stating this bill is bad for Montana. He emphasized that the Association has made gallant efforts to streamline procedures to ensure that construction projects get underway in an expedited and efficient fashion. He thought this bill would take Montana backwards. He fears this bill would trigger a process that would take projects back years thus requiring additional environmental impact statements. He urged a do not pass.

{Tape: 3; Side: B; Approx. Time Counter: 275- 304}

Carl Schweitzer, Kalispell Chamber of Commerce, opposed HB 658.

He stated that safety is a concern and anything that delays highway construction presents an issue of safety.

{Tape: 3; Side: B; Approx. Time Counter: 305 - 332}

Informational Testimony:

Mike Barrett, Poet, Town Councilman, Helena, asked the Committee to put in "art zones" and push for cleaner windshields. He asked for a 20,000 mile border limit for hitchhiking. He asked for more intermittent places where trucks could stop on the roads and highways. He stated that this would help the hitch-hikers. He

asked for slower driving controls which the feds would support. He spoke of pervasive energy and how slower driving would establish more control and cleaner air.

{Tape: 3; Side: B; Approx. Time Counter: 333 - 426}

Questions from Committee Members and Responses:

REP. EVERETT asked Mr. McGarvey whether MDOT paid over \$100,000 in litigation fees from the Route 40 case and whether they had to pay damages to the homeowners as well. **Mr. McGarvey** responded that the Department did pay a lot in fees and did pay the landowners for damages from the flood. **REP. MALCOLM** asked Mr. Reardon if the Department could adopt a more friendly and open process which would involve the affected citizens. **Mr. Reardon** felt that is already going on with the Department and that the public is involved.

{Tape: 3; Side: B; Approx. Time Counter: 427 - 512}

REP. NOENNIG asked Mr. McGarvey if one landowner could object or whether all the landowners would have to join. **Mr. McGarvey** responded they would probably join as a neighborhood. He stated that engineers cost five to twelve thousand dollars so it would only happen in cases where there is a big problem. He stated he hires hydrologists for hydrology projects and safety engineers on safety projects.

{Tape: 4; Side: A; Approx. Time Counter: 1 - 87}

CHAIRMAN SHOCKLEY stated that the way the law is now, the State's expert gets the presumption of being right and the landowner has to attack uphill. **Mr. Reardon** responded that the presumption for the landowner is difficult to overcome but it has been, and can be, overcome. He stated that in the last ten years, the Department has had fewer than ten hearings on issues of necessity. He explained if the landowner loses, he pays his own legal fees.

{Tape: 4; Side: A; Approx. Time Counter: 88 - 132}

REP. RASER asked Mr. Reardon about the Swamp Creek project and the time between designing the project, purchasing the right of way, and notifying the landowners. **Mr. Reardon** stated that it takes place over two to three years and that the landowners are notified that the project is coming and given the parameters of the right-of-way. He stated the Department negotiators and right of way agents are visiting with them well over a year before he even sees the project. **REP. RASER** questioned why the Department

did not act more appropriately since they knew they were going through this area. **Mr. Reardon** responded that the Department screwed up and that the consultant project did not occur until the right-of-way people began exploring it. He stated that the Department may design 159 road projects and he cannot guarantee they will all be right. **REP. MALCOLM** stated his personal experience in seeing how the Department handled a project in his district. He felt that the Department should develop a better policy to allow landowners to look at the projects well before the Department spends money on designs. He stressed that good public relations must be dealt with up front before the Department spends any money on a project.

{Tape: 4; Side: A; Approx. Time Counter: 133 - 196}

Closing by Sponsor:

REP. DOWELL closed on HB 658. He stated that anytime there is a dispute, the law presumes the Department is right and the landowner is wrong. He stated that landowners will not sue unless they have a good case and noted the costs involved. He stated that this bill would help to assure landowners get a fair hearing.

{Tape: 4; Side: A; Approx. Time Counter: 197 - 234}

HEARING ON HB 693

Sponsor: **REP. JOHN SINRUD, HD 31, Bozeman**

Opening Statement by Sponsor:

REP. SINRUD opened on HB 693. He explained that in situations where both parents of a child are known, the parent raising the child could file for child support with Child Support Enforcement Division (CSED) and begin receiving support immediately. He stated that after a court decision is made, CSED can readjust the child support to be higher or lower. He explained this bill would help the parent raise the child while waiting for the court to hear the case.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

The Committee asked about paternity and obligation to pay. **REP. SINRUD** responded that once paternity is established the CSED has the right to set, upon service, the obligation of the debt to the absent parent. He stated that under current law, a person has to apply through CSED and it takes a lot to get to court and the defendant has an opportunity to refute the CSED findings. He emphasized that the process goes on and on and that the system is being abused.

REP. NOENNIG stated the bill's intent is already met under current law. He emphasized that CSED actions are always subject to review by the district court. **Mr. Olson** stated that this bill would be slightly different because the alleged obligation becomes enforceable prior to the hearing.

{Tape: 4; Side: A; Approx. Time Counter: 235 - 412}

REP. FACEY asked whether a parent could get a TRO in district court against a CSED determination. **Mr. Olson** responded that a district court may always enjoin a CSED action but typically, a court is asked to review a CSED order. **REP. FACEY** asked why the intent of this bill was not enacted in the original bill. **Mr. Olson** responded that it involved due process concerns; that in actions involving the State, an opportunity for a hearing must be afforded prior to a taking. He explained that this bill would allow a taking prior to a hearing.

{Tape: 4; Side: B; Approx. Time Counter: 1 - 53}

REP. STOKER asked how soon a paternity test can be enforced. **Mr. Olson** responded they can order a test within 20 days and it takes up to six weeks for the results of the test. He stated if either party wants the DNA matter reviewed in court, they have rights under the Uniform Paternity Act.

REP. LANGE stated that CSED already has very thorough procedures to calculate income and financial obligations. He felt this bill would only help improve an already good system. **REP. SINRUD** responded that the intent of the bill is to make it easier to resolve support issues and to make the absent parents responsible for their children.

{Tape: 4; Side: B; Approx. Time Counter: 54 - 116}

Closing by Sponsor:

REP. SINRUD closed on HB 693 stating that it would hold the absent parent financially responsible. He urged a do pass.

HEARING ON HB 695

Sponsor: **REP. ROY BROWN, HD 14, Billings**

Opening Statement by Sponsor:

REP. BROWN opened on HB 695. He stated this bill deals with medical malpractice. He explained that all across the Country, doctors are leaving the practice of medicine citing exorbitant medical malpractice (med-mal) insurance costs. He felt that Montana already has some good tort reform but that it does not go far enough. He explained that people cannot afford health insurance because it is so expensive.

{Tape: 4; Side: B; Approx. Time Counter: 117 - 202}

Proponents' Testimony:

John Michelotti, Helena, supported HB 695. He supported HB 695, stating that he is an orthopedic surgeon. He explained that many physicians have chosen not to practice medicine due to the liability exposure. He stated that premiums have increased 30-40 percent for medical malpractice in the past year and that this results in higher health insurance costs. He explained that this bill would limit noneconomic damages arising from emergency care to \$50,000. He felt limiting these damages would help decrease overall medical costs. The bill would also limit expert testimony on med-mal cases to require an expert to have five years of practical experience in the field for which they are testifying.

{Tape: 1; Side: B; Approx. Time Counter: 378 - 507}

Susan Good, Lobbyist, Helena, supported HB 693. She read a letter from Paul Gorsetch, a neurosurgeon which stated in part:

. . . Our malpractice carriers inform us that rates may soon double. Even in my circumstance where I am part of a purchasing pool with an extended contract, insurance rates are expected to rise 20 to 30 percent in the coming year; 30 to 40 percent the year after that. Trauma cases are often treated at no charge as there is no insurance, or only limited auto insurance in cases where hospital bills commonly run in the hundreds of thousands of dollars thus

eliminating any hope of physician reimbursement. . . . In short, neurosurgeons have no incentive beyond altruism and community service to cover trauma services.

Ms. Good stated the average medical malpractice claim in Montana is \$236,000. She stressed that it is physicians who fear malpractice suits that subject patients to move towards more invasive and expensive tests. She explained that this sort of practice, known as defense medicine, accounts for five to nine percent of all medical costs but that there is no measurable affect on patient health. She asked the Committee to imagine what a nine percent drop in medical costs could do to make the "health care constellation" more affordable.

{Tape: 4; Side: B; Approx. Time Counter: 203 - 310}

REP. DON ROBERTS, HD 10, Billings, supported HB 695. He stressed that the average cost of defending a med-mal case is \$23,000 before it goes to court. It costs \$50,000 to \$200,000 to defend a case that has gone to court. He stated in Montana, it takes about 4.3 years to bring a case to court. He felt that Montana is close to a malpractice insurance crisis. He stressed that it needs to replace lump sum settlements with a series of measured amounts and to put reasonable limits on contingency fees. He stated that premiums increased 35 percent last year and 25 percent this year and 50 percent next year. He explained that some obstetricians (OB's) have quit due to liability. He stated an OB pays \$70,000 a year for insurance if they deliver babies and \$38,000 a year if they do not. He worried that Montana is losing a lot of expertise.

EXHIBIT (juh38a08)

EXHIBIT (juh38a09)

{Tape: 4; Side: B; Approx. Time Counter: 291 - 388}

Pat Melby, Montana Medical Association, supported HB 695. He stated that Montana has a packet of tort reform measures.

Mark Taylor, Montana Hospital Association, supported HB 695, stating that Montana's hospitals have suffered a 100 to 300 percent increase in medical malpractice insurance rates.

{Tape: 4; Side: B; Approx. Time Counter: 389 - 428}

Mona Jamison, Attorney, Lobbyist for the Doctor's Company (Company), Helena, supported HB 695. She stated the Company insures only physicians. She stated that in 1995, the Company was involved in HB 309 which had to do with tort reform

establishing the \$250,000 cap on noneconomic damages. She explained that a July, 2002, report, prepared by the U.S. Department of Public Health and Human Services, claimed that states in which caps were \$250k only had a 15 percent increase in insurance rates; states without caps had an average of a 44 percent increase in insurance rates. She directed the Committee to examine the section of the bill on expert testimony. She explained HB 695 would require an expert to have expertise in the area of medicine at issue.

{Tape: 4; Side: B; Approx. Time Counter: 429 - 512}

Mary McHugh, Executive Director of the Montana Dental Association, supported HB 695. She stated this bill is reasonable. She explained that the med-mal limitations of the bill would only occur in emergency situations and would affect dentists in those situations. She urged a do pass.

{Tape: 5; Side: A; Approx. Time Counter: 1 - 13}

Opponents' Testimony:

Randy Dix, Helena, opposed HB 695 on his own behalf, on behalf of his clients across the State who were victims of medical malpractice, and on behalf of the Committee members. He stated that we all have about a 50 percent chance of having an adverse medical occurrence. He stated that he lives and practices in the real med-mal world. He spends great amounts of resources, time, effort, and money persuading people not to pursue med-mal cases which are not legitimate or which do not have serious validity. He suggested, respectfully, that he was the only person in the room that works day in, and day out, in the field of medical malpractice.

He explained the defects of the bill. The \$50k cap in noneconomic damages is not clear as to whom it would affect. The bill states a plaintiff may not recover more than \$50k in noneconomic damages. It is unclear whether the bill applies to each plaintiff individually, or whether plaintiffs should be characterized as a whole family. He gave an example of a 52-year-old man who went into the hospital in 1999 with a ruptured spleen. He had emergency surgery to remove it. The surgeon failed to tie off the main artery which supplies blood from his heart, to the aorta, and to the spleen. He was taken to ICU in unstable condition and died an hour and a half later holding his wife's hands in pain. He left a wife of 35 years and four children. He emphasized that the bill as written appears to say that the children and the wife would be limited to a sum total of \$50k. This amounts to less than \$12k for each family member.

{Tape: 5; Side: A; Approx. Time Counter: 14 - 74}

Mr. Dix stated that jury verdicts or settlements of med-mal cases in the past five years have not provoked increased insurance premiums. He invited anyone in the room to argue otherwise.

He stated that the second aspect of the bill is flawed. It would exclude experts who are academicians, and people who have worked in the field, noted luminaries, but who may not have practiced at least half-time, for the past five years. He stated he represented a victim of med-mal which went before a medical screening panel consisting of three lawyers and three doctors. All six panel members agreed there was evidence of medical malpractice causing the person's death. He explained that due to the politics surrounding the doctor, he could not find an expert in Montana willing to stick their neck out against their brethren so he had to find an expert outside of Montana. His expert was Shermin Newland, a physician and full professor at Yale University, a general surgeon practicing for 40 years, and author of a book entitled, On Death and Dying. Mr. Dix stated that Mr. Newland had not practiced for about three years at the time he was hired as an expert yet he had performed thousands of splenectomies. **Mr. Dix** stressed that if HB 695 passed, Dr. Newland would not be able to testify as an expert which would be absurd.

{Tape: 5; Side: A; Approx. Time Counter: 75 - 174}

Jennifer Hensley, Paralegal, Butte, opposed HB 695. She stated that this bill is a veiled attempt by insurance companies to make money. She stressed to the Committee that this bill would not make insurance rates go down; would not protect doctors, and would not protect the Committee's constituents. She emphasized that the only people this bill would protect are the insurance companies. She stated if you take a six-year-old boy into the emergency room and he dies as the result of an act of medical malpractice, the most his life would be worth is \$50,000. She stressed the point that this bill disrespects the jury as it basically states, "We don't trust you to weigh the evidence and the facts before you and determine a settlement proper to this case."

She stated we are very lucky to have the fine doctors we have in Montana but people are fallible; mistakes are made. She stressed that when mistakes are made, \$50,000 may not be enough to cover it.

{Tape: 5; Side: A; Approx. Time Counter: 175 - 204}

Al Smith, Montana Trial Lawyer's Association, opposed HB 695. He stated that Montana currently has a cap for med-mal damages of \$250k which is the amount President Bush proposed for a national level. Montana is only one of three states, along with California and Ohio, that has this lowest level, \$250k, for med-mal damages. He explained that this bill affects noneconomic damages and that women, children, and the elderly are most affected. This is due to the fact they do not work or their income levels are generally lower. He stated that noneconomic damages cover physical and emotional pain and suffering, emotional distress, inconvenience, physical impairment and disfigurement, scarred for life, and losing a limb.

Mr. Smith told the Committee about a class action suit he was involved with which involved restraint and seclusion. They hired Dr. Ken Tardiff, the foremost expert in the country, if not the world, on restraint and seclusion. Dr. Tardiff chaired the American Psychiatric Association's Committee which wrote the premiere book and guidelines on restraint and seclusion. Mr. Tardiff taught at Cornell Medical School but did not practice medicine 50 percent of the time. If this bill passed, Dr. Tardiff would not qualify as an expert. **Mr. Smith** stated that passing HB 695 would not lower insurance rates. He urged a do not pass.

{Tape: 5; Side: A; Approx. Time Counter: 205 - 355}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS stated that the qualifications of who is an expert has been shaped over the decades. He asked why the Legislature should suddenly step in and change this process. **Mr. Michelotti** responded that as the field of medicine becomes more specialized, it is important to have experts speak from experience in the specialty which is at issue. **REP. MALCOLM** asked whether this bill would limit the number of experts available. **Mr. Michelotti** responded it would not.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 42}

REP. HARRIS asked whether the Legislature should be changing the Rules of Evidence when it has no authority because it is the Judicial Branch's job to promulgate rules of evidence. **Ms. Jamison** responded that the Legislature has Constitutional authority to adopt laws under Article VII, Section 2. **REP. HARRIS** disagreed. He explained that Article VII, Section 2 gives

the Supreme Court, and not the Legislature, the authority to promulgate rules of evidence.

REP. HARRIS commented that courts struggle daily to determine who qualifies as an expert and that it is determined on a case-by-case basis. **REP. HARRIS** asked Mr. Dix whether he was familiar with Supreme Court cases in which the expertise of the expert witness has come into question and whether he knew of any instance in which the Supreme Court failed to address it at the trial level. **Mr. Dix** stated that he was not aware of any cases in the past 25 years. **REP. HARRIS** stated in Catrell v. Burlington Northern, Justice Trieweiler, tossed out a neurosurgeon's testimony due to a lack of foundation. He stated that courts struggle and work through the issue on an ad hoc basis and that courts should not be hamstrung by any rule which would disallow them discretion. **REP. RICE** asked about the percentage of med-mal cases which are on a contingency fee basis. **Mr. Dix** responded that all of his cases are taken on a contingency basis; if they were not, the people would not have access to justice.

REP. GALLUS stated he lives with the chief paralegal in a plaintiff's law firm and he is the son of a surgeon which can present conflicts at the dinner table. He posed that if an orthopedic surgeon operated outside of his expertise and caused an injury, would it be right that expert testimony be confined to the area of orthopedic surgery. **Mr. Dix** responded that this bill would do just that and it would be wrong. Using **REP. GALLUS'S** hypothetical example, **Mr. Dix** stated that if an orthopedic surgeon practiced neurosurgery, this bill would limit expert testimony to the orthopedic surgery even though he practiced outside of his specialty.

{Tape: 5; Side: B; Approx. Time Counter: 1 - 41}

CHAIRMAN SHOCKLEY commented that in his reading of the bill, Page 2, Line 1 allows "a plaintiff" \$50k so in the case of Mr. Dix's client who died having his spleen removed, the wife and the four kids would each recover \$50k for a total recovery of \$250k. **Mr. Dix** responded that the bill is unclear whether that would be the case. **CHAIRMAN SHOCKLEY** stated the definition of "emergency care" is pretty broad and asked Mr. Dix whether he would provide another definition. **Mr. Dix** stated he would.

Closing by Sponsor:

REP. BROWN closed on HB 695. He stated most lawyers are good and he is not lawyer bashing. He stated that many insurance companies are hesitant to come to Montana because of the issues

of expert witness testimony. He stated that he is not a doctor or an attorney and that if the Committee may come up with better definitions for the bill, he would be happy to work with them. He urged a do pass.

{Tape: 5; Side: B; Approx. Time Counter: 42 - 145}

ADJOURNMENT

Adjournment: 12:45 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh38aad)